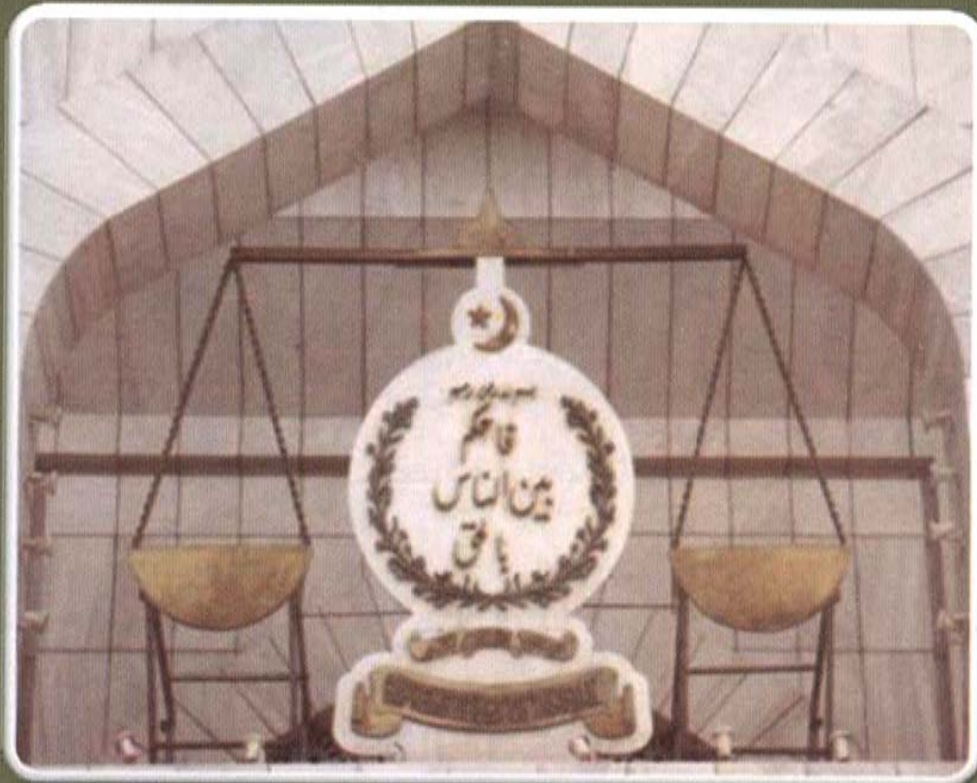


National Judicial Policy

(Revised Edition, 2012)



National Judicial (Policy Making) Committee
Secretariat, Law & Justice Commission of Pakistan
Islamabad

National Judicial Policy 2009

[Revised Edition 2012]

National Judicial (Policy Making) Committee

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Justice at the Grassroot Level

Meeting of the NJPMC was convened at a critical moment of our national history. There has occurred a gradual deterioration in the law and order situation and parts of the country are experiencing militancy and violence, causing the displacement of hundreds of thousands of innocent people - men, women and children. These are difficult times as we are facing existential threats. But I do not think that the difficulties are insurmountable. We are a tenacious nation, have demonstrated, more than once, our strength and ability to face challenges. The lawyers' movement for restoration of independent-minded judges and supremacy of law/Constitution is a case in point. The movement for a grand cause was thronged by enthusiastic groups including civil society organizations, professional groups, political parties and students, etc. In the evening of 15 March 2009, the movement transformed itself into a mini-revolution. It demonstrated the agility and determination of the masses to stand by the Constitution and dispensation of power under this supreme law. It emboldened me to say today, that together we could face challenges and convert them into opportunities. I have full faith in the ability of the people to rise to the occasion and chalk out a future course of action, based on democratic values and constitutional principles.

The restoration of 3rd November (2007) judiciary ushered in a new era: an era of hope that political dispensation in the country and governance shall be in accordance with the constitutional principles. The people of Pakistan have reposed great confidence in the ability of the judiciary to redress their grievances and grant them relief. They have very high expectations of the courts to settle their disputes, restore their rights/entitlements and maintain peace in society by sending the guilty behind bars. I thank the people for believing on us! We must strive hard to meet their expectations. This is time to repay our debt to the nation. We could do so by addressing the perennial twin-problems of "backlog" and "delays" in the system of administration of justice. To achieve the objective, the National Judicial Policy was formulated.

The key features of the National Judicial Policy are strengthening the independence of the judiciary by its separation from the executive and ridding the courts of the menace of corruption, thereby presenting a clean and positive image of judiciary. In the Policy, we have set high goals for ourselves. The goals are to initially reduce, and ultimately eliminate, backlog at the level of superior as well as subordinate courts, and further, to fix time frame for disposal of civil and criminal cases. The criminal cases will get priority on account of the sub-human conditions in which under-trial prisoners are kept in jails. Writs for protection of fundamental rights i.e. right to life, liberty, equality, property and freedom of thought, conscience, association, etc will also be maintained on fast track. Furthermore, financial/rent matters and family/juveniles cases will also receive preference, which is crucial for economic development and protection of family values.

The Policy seeks to achieve its objectives, by efficient utilization of existing resources. We have to operate by remaining within the given legal/procedural framework. The laws are indeed time-tested. Given earnest effort by the bench and the bar, I am confident of achieving positive results. However, keeping in view the gigantic effort new resources would be needed. We would be very economical in the utilization of the needed resources. I am confident that the Government will provide the requisite funds, as our effort is to strengthen the administration and improve governance. It is necessary for peace and security, thereby spurring trade/commercial activities and foreign/local investment in the economy. This is how, the industrialized countries progressed. This is how, we can move forward. We could achieve the results by establishing a society based on the supremacy of Constitution and rule of law. Our aim is to provide Justice for All.

In the ultimate analysis, the Policy seeks to ensure that the constitutional principles of equality before law and equal protection of law are strictly adhered to. Adherence to law/Constitution leads to nation building. It is a sure recipe for economic growth and social progress. Law protects the rights/interests of poor/downtrodden segments of society. It helps to break shackles of cruelty/injustice. It puts an end to exploitation of the underdog by the rich/influential. Let us strive to achieve the noble goals, set in the Policy. Let us infuse confidence in the minds of our people that the system of administration of justice is capable of meeting the challenges of time and emerging realities. Let us make the judicial organ of the state as a sheet anchor at the time of serious challenges. I have no doubt that my brother Judges in the superior courts and judicial officers would help and support us in our drive to steer the ship of the nation through troubled waters. I am equally confident of the help and support of the members of the bar. We have carried out very wide consultations with them as well as other stakeholders. Their valuable suggestions have been incorporated in the Policy.

Ifthikhar Muhammad Chaudhry
Chief Justice of Pakistan

Executive Summary

The historical movement for restoration of independent-minded judges, supremacy of the Constitution and rule of law has heightened the expectations of the public for early resolution of their cases by courts. Conscious of the public expectations/aspirations, the Chief Justice of Pakistan decided to initiate the process of formulating a new judicial policy for expediting trial proceedings. He assigned the task to the Secretariat of NJPMC to devise an appropriate strategy and work plan for action. The NJPMC is a statutory body, the nation's apex judicial forum. It is headed by the Chief Justice of Pakistan and comprises Chief Justice, Federal Shariat Court and Chief Justices of provincial High Courts, as members. The Secretary, Law and Justice Commission of Pakistan is designated as the Secretary to the Committee. The Committee is required, inter alia, to prepare and implement judicial policy for improving the capacity and performance of the administration of justice by setting performance standards.

The Chief Justice of Pakistan/Chairman NJPMC convened a 2-day session of the Committee on 18-19 April 2009 to consider the draft providing steps to strengthen judicial independence, check corrupt practices in the judicial system and prioritize certain categories of cases for expeditious disposal. The meeting lasted for 2-days; in one session, the representatives of the bar including Vice Chairman, Pakistan Bar Council, Vice Chairmen, of the Provincial Bar Councils, President, Supreme Court Bar Association and Presidents of all the High Court Bar Associations were also invited. After thorough deliberations, a draft was approved, which was forwarded to all judges of the Supreme Court, High Courts and Subordinate Courts. Copies of the draft were also forwarded to the President, Supreme Court Bar Association, all High Courts Bar Associations, all District Bar Associations and all Tehsil Bar Associations. Simultaneously copies of the draft policy were also forwarded to Attorney General for Pakistan, all Advocates General, all Prosecutors General, Secretary, Law and Justice Division, Secretaries of the provincial Law Departments, Inspectors General of Police, Inspectors General of Prisons, members of the Law and Justice Commission of Pakistan, etc. The Secretary, NJPMC in a press briefing shared the draft with media and general public. The draft was also placed on the LJCP website for feedback.

The draft National Judicial Policy was subjected to thorough analysis at various fora. The members of the bar held in-house sessions to discuss the report. The District & Sessions Judges convened meetings of district judiciary alongwith representatives of the District/Tehsil Bar and forwarded their recommendations to the respective High Court. The Chief Justices of High Court held consultations with the judges of the High Court, District & Sessions Judges and representative of the High Court Bar Associations. Similarly, consultations took place in the office of Attorney General for Pakistan, Advocates General, Secretary, Law and Justice Division and Law Departments, etc. The output of such deliberations was forwarded to the Secretary, NJPMC. Many judges of superior courts, members of the bar also contributed their input to make it more result oriented. The input/ recommendations received from various fora/individual members were examined and a comprehensive draft was prepared. The draft was initially discussed in a meeting of the Registrars. After discussion, a draft was finalized. The NJPMC considered the said draft in its meeting on 16-17 May 2009. After exhaustive deliberations lasting for 2 days, the Committee finally approved the National Judicial Policy. The Committee decided that the respective High Court would make strategies and prepare plans for effective implementations of the Policy. The Policy was released on 30th May 2009 in a press briefing by the Registrar, Supreme Court/Secretary, NJPMC and came into force on 1st June 2009.

The major thrust of the Policy is on early disposal of pending cases in the superior courts as well as in district courts all over the country. The courts performed well and by and large achieved the targets set for disposal of cases. After enforcement of Judicial Policy, the Supreme Court, Federal Shariat Court, High Courts and District Judiciary decided total 8,532,548 cases. During this period 8,243,043 new cases were instituted meaning thereby that the disposal figure is 289,505 higher than the institution, which is an outstanding achievement. The figure of disposal is encouraging and shows the confidence of people in the judiciary to resolve their cases and protection of their rights which is a good omen for the nation. On the other hand, the significant performance of courts has strengthened the perception of general public about the rule of law in the country. The Policy proved a tool to sensitize the people regarding their rights. However, deficiency if any was on account of cogent reasons beyond the control of courts. Besides, in the Policy certain measures are suggested to strengthen the role of judicial

institutions, keep its independence secure and maintain a clean and impartial image of the judiciary.

Since its application, the Policy is constantly under review to make it responsive to address the twin issues of backlog and delays in litigation. Previously in 2011, the revised edition of the Policy was published which covered all the recommendations of the meetings of NJPMC and Judicial Conferences held in between 2009 to 2011. The Committee in its meetings dated 30-31 March 2012 at Peshawar and 27-28 April 2012 at Karachi considered various issues hindering the process of dispensation of justice and made recommendation to tackle these hiccups. Besides, the Committee also approved the recommendations of International Judicial Conference 2012 held on 13 to 15 April 2012 under the auspices of NJPMC. All the relevant recommendations have been incorporated in the instant edition. It is hoped that the Policy will have far reaching effects in making the judicial organ of the state as a sheet anchor at the time of serious challenges.

09-7-2012

Habib-ur-Rehman Shaikh
Secretary

National Judicial Policy

A. INDEPENDENCE OF JUDICIARY

1) In future no chief justice or a judge of the superior court shall accept appointment as acting Governor of a Province.

2) No retired judge of the superior court shall accept an appointment which is lower to his status or dignity including appointment as presiding officer of Banking Court, Customs Court, Administrative Tribunal, etc. However, where statute provides that the person appointed as Chairman or Presiding officer of such Court or Tribunal shall be a retired or sitting Judge of the Supreme Court or High Court, he may be appointed in consultation with the Chief Justice of Pakistan or Chief Justice of the respective High Court, as the case may be.

- (i) The Committee asked the retired judges of the superior judiciary to maintain the highest standards of decorum and voluntarily relinquish the charge of such posts which are lower to their status to earn respect in public and uphold the principle of the independence of judiciary.
- (ii) The Committee asked the Secretary, National Judicial (Policy Making) Committee to write letters to the Secretary, Establishment Division and Provincial Chief Secretaries to relieve all such judges and may not make such appointments in future.
- (iii) As regards filling of vacant posts of Judicial Officers, the High Courts should make necessary amendments in the relevant recruitment rules enabling the High Court to conduct test/interview for recruitment of judicial officers in the light of principles set forth in the judgment passed by the High Court of Sindh in C.P No-D2404/2008 (Rashid A Rizvi & others v/s Province of Sindh & others).
- (iv) Judicial offices should not remain vacant and the appointments must be made expeditiously.

- (v) Appointment of Judges to be fair and purely on merits. In this regard the committees for selection of judicial officers be carefully constituted from amongst the honest, strong willed judicial officers to withstand the pressures whatsoever and in whatever manner coming from outside.

3) Instead of appointing retired judges/judicial officers as presiding officers of the special court/tribunal, qualified serving judges be appointed against these posts in consultation with the Chief Justice of the High Court.

4) The High Courts may recommend the serving Judicial Officers for appointment as presiding officers of special courts by transfer or on deputation. However, where such appointments are required to be made by direct recruitment then the same should be made from amongst the highly qualified and experienced advocates.

5) Posting of serving judges against executive posts in Federal and Provincial Government Departments on deputation be discontinued. All such judges should be repatriated to the respective High Courts, where their services are needed most for expeditious disposal of pending cases. However, there should be no bar on serving judges for posting in the judicial academies.

6) All special courts/tribunals under the administrative control of Executive must be placed under the control and supervision of the judiciary, their appointments/postings should be made on the recommendation of the Chief Justice of concerned High Court.

- (i) For effective judicial control over such courts/tribunals, the High Courts should critically examine their judgments under its appellate jurisdiction. The special courts/tribunals such as Revenue Courts, Labour Court, Custom Courts, Banking Courts, Anti Corruption Courts, NIRC, Special Courts for Narcotics, Banking Courts, Drug Courts, Consumer Courts, Federal/Provincial Service Tribunals, Environment Tribunals and Income Tax Appellate Tribunals etc. are performing judicial functions thus these should work under the supervision of respective High Court. In this regard the Federal/Provincial governments should amend the relevant laws to bring the judges

and staff of the Special Courts in the purview of the respective High Court.

- (ii) The performance of administrative staff of special courts/tribunals is not found satisfactory and there are complaints of corruption against them; therefore, the Chief Justices of High Courts through Registrars should ensure the implementation of the National Judicial Policy as the same is also binding on such courts/tribunals and take steps for eradication of corruption.
- (iii) Performance of special courts/tribunals should be monitored by the respective High Courts.
- (iv) Members of the service tribunals have to decide service appeals by interpreting legal provisions; therefore, persons having sound knowledge and understanding of law/rules and ability to decide cases judiciously may be appointed as a member of such tribunals. Retired District & Sessions Judges may be considered for appointment as member of such tribunals.

7) In future the judiciary would avoid its involvement in the conduct of elections, as it distracts the judicial officers from professional duty and complaints of corrupt practices tarnish the image of judiciary.

The reputation of judiciary is at stake during election due to involvement of vested interests groups, etc in corrupt practices. On the other hand, it also adversely affects the judicial functions of the courts. Even otherwise, the Conduct of General Elections Order 2002, Representation of the People Act, 1976 and Local Government Ordinance 2001 do not contain any provision which requires that the elections are to be held under the supervision of the Judiciary. Therefore, in future, the Judiciary should remain aloof from the process of election to focus on disposal of cases. However, in case of request from the Government, the NJPMC would decide the extent to which and form of help to be extended to Government in the conduct of elections. The judiciary will continue to extend support and cooperation in adjudication of election related disputes/complaints as provided under the law.

B. MISCONDUCT

1) The Judges of the superior courts should follow the Code of Conduct prescribed for judges. They should take all steps necessary to decide cases within the shortest possible time. As provided by Article X of the Code of Conduct: "In his judicial work a Judge shall take all steps to decide cases within the shortest time, controlling effectively efforts made to prevent early disposal of cases and make every endeavor to minimize suffering of litigants by deciding cases expeditiously through proper written judgments. A judge who is unmindful or indifferent towards this aspect of his duty is not faithful to his work, which is a grave fault". Hence, the Chief Justice of concerned High Court may report cases of violation of Code of Conduct including incidents of unusual delays/inefficient performance to the Chairman, Supreme Judicial Council for action.

The prime duty of a judge is to present before the public a clean image of judiciary. The oath of a judge implies complete submission to the Constitution and under the Constitution to the law. Subject to these governing obligations, his function of interpretation and application of the Constitution and the law is to be discharged for the maintenance of rule of law. To be a living embodiment of these powers, functions and obligations call for possession of the highest qualities of intellect and character. Equally, it imposes patterns of behavior, which are the hallmark of distinction of a judge among his fellow-men. Therefore, the Committee asked the Chief Justices to report the violations of Code of Conduct to the Supreme Judicial Council for appropriate action.

2) Establishment of a code of conduct on gender sensitivities and judicial empathy should be observed by all associated with the judicial system, in particular judges, court staff and counsel.

C. ERADICATION OF CORRUPTION

1) The code of conduct for subordinate judiciary, framed by the Peshawar High Court and adopted by the Lahore High Court should be considered for adoption by the High Courts of Sindh and Balochistan.

2) The present mechanism for initiation of disciplinary action against corrupt and inefficient judicial officers/court staff be improved. In each High Court a Cell to be called "Cell for Eradication of Corruption from Judiciary" may be established in the office of Registrar, under the supervision of Chief Justice of High Court to entertain complaints with credible evidence. Copies of such complaints may also be forwarded to the Registrar, Supreme Court of Pakistan. As regards the officers/staff of the Supreme Court, a Judge shall be the Incharge of such Cell.

3) Action should be initiated against those judicial officers/staff that carry persistent reputation of being corrupt or have their life style beyond ostensible means of income.

- (i) The performance of the District and Sessions Judges should be monitored by appointing a judge of the High Court and conducting surprise visits/inspection of the Courts.
- (i-a) The period of probation of the judicial officers be kept under strict watch, their performance be carefully assessed at the time of making decision as to their confirmation or otherwise.
- (i-b) ACR's of the judicial officers be prepared with great care and caution and the same should not be undone by the high court without verification of report submitted by the reporting officer.
- (i-c) Judges/Judicial officers be required to declare their assets and that of their dependants at the time of their induction and thereafter on annual basis.
- (ii) To curb the malpractices and corruption of courts staff, Munshi/clerks of the lawyers and touts, a "Committee" headed by the District and Sessions Judge and President District Bar Association should be formed to entertain

complaints against corrupt officials for taking action against them under the Law.

- (ii-a) Judicial officers be required to keep an eye on the touts in collaboration with the office bearers of the Bar Associations.
- (ii-b) Bar Councils should take steps for early disposal of the complaints of professional misconduct by the lawyers and also make all possible efforts to discourage the elements involved in corrupt practices and professional misconduct and are earning bad name for the Bar.
- (ii-c) A complaint box shall be placed in every District Court for facilitating the litigants regarding their complaints against judicial officers and court staff. It shall be directly supervised by the D&SJs, who shall take appropriate action on authentic complaints.
- (ii-d) Only authentic complaints duly supported by substantive evidence should be considered for action and in case of false accusation the complainant should be taken to task maligning the judiciary.
- (ii-e) CCTVs should be installed in the court premises to enhance the surveillance mechanism for curbing corruption.
- (ii-f) Commandments negating corruption and corrupt practices shall be affixed in Court premises.
- (iii) The Chief Secretaries of the provinces should initiate steps for computerization of revenue record on the pattern of Punjab province.
- (iv) The concerned Secretaries of the Revenue Departments may take necessary steps for eradication of corruption and streamlining the functioning of Revenue officials/ departments by formulating efficient policy within 3 months and forward the same to the Chief Justice of the respective High Court for consideration in the meeting of NJPMC.

- (v) Corruption must be curbed through awareness campaigns and empowerment of the civil society through capacity building initiatives including workshops, trainings and seminars.

4) To guard against the evil of nepotism, favoritism, corrupt means, etc, the MITs in High Courts may examine the judgments of the judicial officers to detect incidents of corruption/improper conduct. All the judicial officers of the subordinate judiciary may be asked to send copies of the judgments including bail/stay orders for scrutiny to MITs.

4-A) Judgments appraisal system by Appellate Courts must be ensured.

5) Surprise inspections be carried out by the Chief Justices/Judges of the High Courts to monitor the working of subordinate judiciary. In this regard, Judges of the High Courts be designated for each division/district on rotation basis.

6) The District and Sessions Judges should also report about the corruption/ misconduct of their subordinate judges.

7) The judge should himself write order sheets, interlocutory orders and register petitions.

7-A) *To minimize the chances of producing false affidavits, following steps shall be taken:-*

- (i) The High Courts may install a Close Circuit Televisions (CCTV) and the snaps of the deponent be captured and attached with the file as evidence.
- (ii) Persons found violating the instructions should be dealt with under the relevant disciplinary rules.
- (iii) Stamp venders shall be compelled to ensure that the stamp papers are sold to a person after ascertaining/ verifying his identity, all affidavits should be attested by the Oath Commissioner/Authorize Officer of Courts after getting proof of identity.

8) Appropriate criminal cases under the relevant provisions of law may also be registered against the judicial officers/court staff involved in corruption.

9) The corrupt judicial officers be made OSDs and kept against their post for the purpose of drawing salary only and disciplinary proceedings should be quickly finalized.

10) No judicial officer/official should be posted in home district and those remained posted in a particular district beyond 3 years should be transferred to other district.

The judicial officers shall not be transferred before completion of 3 years tenuro at a station unless the interest of public or the institution demands early transfer/posting.

10-A) Judges be not posted at places where their relatives practice as lawyers.

10-B) Transfers of judges be made by posting proportionally to hard areas by rotation.

11) Naib Courts having completed 3 months attachment with a court should be sent back to their parent department instead of transferring them to other court by rotation.

12) The complaints of corrupt practices and professional misconduct against lawyers addressed to the Chief Justice of High Court should be forwarded to the Bar Council for action. The Council should take immediate action on such complaints under intimation to Registrars of the concerned High Court.

- (i) To ensure appearance of Counsels in cases before district judiciary, the senior lawyers should organize their offices as law firms where they may train their juniors and entrust cases to them for pleading independently. The Junior Advocates should be encouraged to prepare and plead cases independently; this will help in curtailing the delays caused by frequent adjournments on account of non-availability of senior counsel or their engagement in superior courts.

- (ii) The senior lawyers should maintain certain standard for themselves and may not appear before each and every Court at District level.
- (iii) Lawyers must realize their responsibilities and should put their best abilities in assisting the Courts while pleading their cases so that their efforts may be culminated in early disposal of cases.
- (iv) Lawyers must rise to the occasion and stop the practice of taking adjournments and using delay tactics for lingering the cases. There should be a limit for taking adjournments in the cases. If the Judicial Officer comes to conclusion that the advocate is purposely taking the adjournments to prolong the litigation then the requests for adjournment may not be acceded to.
- (v) Lawyers should avoid engaging in a case where another lawyer is already engaged as such act would cause apprehensions for miscarriage of justice.

12-A) Lawyers who have remained judges of the superior courts use the prefix/suffix of their previous designation such as retired Justice, Ex-Judge, Ex –Attorney General etc. to attract clientage. This practice is prohibited under the Rule 174-A of the Pakistan Legal Practitioners and Bar Councils rules, 1976. In this regard Bar Councils are bound to take steps to discontinue the practice of using previous designation or post.

Some Judges who were elevated to the High Courts but not confirmed and other remained unconfirmed and were laid off as a result of Supreme Court's judgment of 31st July 2009 continue to use the prefix/suffix of retired Justice which is contrary to law/rules. Since they are not entitled to the honour, they must not use it. The Committee also request the print/electronic media to exercise due care while referring to such persons.

12-B) Some Lawyers who have remained judges of the superior courts are using flags, emblems/ insignia of their previous offices to mislead the law enforcement agencies or avail the protocol of a judge of the superior courts. This practice is against the law and norms; therefore, should be dealt with under the Legal Practitioner and Bar Council Rules 1976 and District Police Officers should take action against such retired judges.

13) Incentives should be given to the honest, efficient and hard working judicial officers including advance increments and posting at stations of choice etc.

13-A) High Courts should give incentives in terms of advanced increment/cash awards to the judicial officers who performed well and achieved the targets of the Policy.

13-B) Competent judicial officers be provided opportunities to avail the opportunity of improvement of qualifications.

D. EXPEDITIOUS DISPOSAL OF CASES

SHORT TERM MEASURES

I. CRIMINAL CASES

1) In bailable cases, grant of bail is a statutory right of the accused; therefore, the court before which the accused appears or is brought may immediately release him on bail, subject to furnishing of sureties as provided under section 496 Cr.P.C.

2) Bail application under section 497 Cr.P.C. with photocopy of the FIR, duly authenticated by the Counsel, should be accepted and the court shall call for record of the case on its own through Naib Court.

3) In bail matters, notice to State for production of record shall not exceed beyond 3 days and all the Provincial Police Officers/Inspectors General of Police shall issue standing instructions to the concerned officers to ensure production of record without delay.

4) Bail applications under section 497 of Cr.P.C. shall be decided not beyond a period of 3 days by the Magistrate, 5 days by Court of Sessions and 7 days by the High Court.

(i) The Court should consider the principles set forth by the Supreme Court (1996 S.C.M.R 973) while deciding the bail petitions of women having suckling babies.

(i-a) The provincial governments should take immediate steps for welfare and education of all children confined in Jails with their mothers so that they may be reintegrated in the society as law abiding citizens.

(ii) To overcome the problem of congestion in Jails, the court should exercise powers under section 497 Cr.P.C. keeping in view the principles of grant of bail including the principle that if the offence does not fall under the purview of prohibitory clause, grant of bail is a rule and refusal is an exception.

(iii) In case bail is rejected, the court should take all possible measures for disposal of the case to reduce the chances

of filing of bail petitions before the higher courts. However, where the accused desires to move the higher court, the trial court should provide attested copies of all the relevant documents to avoid the chance of requisitioning of original record from the trial court which hinders the disposal of case.

5) Applications for cancellation of bail under Sub-section (5) of section 497 Cr.P.C. should be decided within 15 days by the courts including High Court.

Grant of bail or otherwise is the discretion of a court and should be exercised diligently and once a bail is granted it should not be withdrawn unless an opportunity is given to the accused.

6) In Criminal Cases it is the duty of the police/investigating agency to submit Challan (Police Report) within a period of 14 days as contemplated in section 173 Cr.P.C. In case of non-completion of investigation, an interim report shall be submitted and in such cases, the court shall not grant remand beyond 15 days period.

The prosecution should strictly follow the Order passed by the Supreme Court of Pakistan in the case of Hakeem Mumtaz Ahmad and other vs the State (PLD 2002 SC 590) and it should be ensured that in future challans of criminal cases are submitted within the stipulated period of 14 days as provided under section 173(1) Cr.P.C failing which action should be taken against the concerned officers for non compliance.

7) Non-completion of investigation and non-submission of Challans in statutory period is a major cause of delays in disposal of cases. Since, Police plays crucial role in administration of justice, therefore, the District Police Officers may be asked to ensure that the police should conclude investigation and submit Challans within the prescribed period of 14 days. They may be asked that the SHOs who fail to comply with this statutory provision should be treated as inefficient officer under the Police Order and the court may also lodge complaint under section 166 PPC against him. The DPOs should also submit list of cases in which Challans are still pending for want of investigation for inspection and passing appropriate orders by the District and Sessions Judge.

7-A) A proper register should be maintained by all the criminal courts having details of FIR, arrest of accused person(s) and due date for submission of Challan enabling the concerned presiding officer to pursue investigation agencies for submission of Challans.

7-AA) Challan of case should be submitted after full preparation and after ensuring that all witnesses will be produced as and when required by the courts.

7-B) Departments of prosecution and Investigation should be strengthened so that criminal cases are decided expeditiously in accordance with law.

7-C) Training of prosecutors, investigators and law enforcer should be carried out on systematic basis to apprise them about modern forensic auditing and investigating techniques.

(i) Communication between investigation agencies and prosecution may be improved so that least time should be consumed in the scrutiny of cases

(ii) The prosecutors should ensure that cases are conducted with utmost care and cases of defective investigation should be reported to the concerned authorities for action under the relevant laws.

(iii) An independent prosecution serving agency under the administrative control of Prosecution Branch be established as provided in the Punjab Criminal Prosecution Service (Constitution Functions and Powers) Act. 2006.

(iv) Number of investigation officers should be increased so that a manageable number of cases be assigned to an officer for Investigation.

(V) The police should remove objections raised by the prosecution within shortest possible time.

7-D) Meetings of the Criminal Justice Coordination Committees should be held regularly to resolve issues hindering the process of dispensation of justice.

8) No Judge should grant remand in the absence of accused and while granting remand should strictly adhere to the relevant provisions of the Code of Criminal Procedure and principles laid down in the Hakeem Mumtaz case (PLD 2002 SC 590)

(i) The District and Sessions Judges should regularly visit Jails on monthly basis to hear the complaints of the prisoners and issue directions for resolution of their problems/difficulties and may release the prisoners involved in petty offences.

(ii) During Jail visits the Judicial Officers should ensure that cases be decided in presence of prosecutors and defence counsels, if any. Alternatively, the D&SJs may call the list of prisoners involved in petty crimes together with Challan for entrusting the same to a Magistrate for disposal.

8-A) In each district at least one Judicial Magistrate should be designated to visit jails and grant judicial remand to the prisoners who could not be produced before the court on account of strike/ law and order situation.

9) All criminal cases punishable with imprisonment for upto 7 years registered after 1st January 2009 be kept on fast track for disposal within 6 months.

For disposal of freshly instituted cases within the stipulated period and to avoid piling of cases, there may be practical difficulties but the same can be overcome by extending court timings depending upon the workload. The extended time could be utilized for writing judgments, framing of charge and other miscellaneous work.

9-A) Old cases may be decided by prioritization the same as per following categorization:-

A. Old cases Category-I

- (i) Cases filed up to the year 2000 as oldest category.
- (ii) Cases filed from 2001 to 2005 as older category.
- (iii) Cases filed from 2006 to 31st December 2008 as old category.

B. Old Cases Category-II

Cases instituted from 1st January 2009 to 28th February 2011.

10) All criminal cases punishable with imprisonment from 7 years and above including death cases shall be decided within a period of 1 year.

Chapter XX and XXII-A of the Code of Criminal Procedure 1898 prescribe detailed procedure for trial of cases by Magistrate and the Court of Sessions to ensure fair trial for the accused. Since this procedure takes longer time, therefore to finalize the proceedings, the following measures should be adopted to cut short the delays:

- (a) On receipt of Challan, the court shall immediately fix the case and issue production warrants/notice.
- (b) When the accused is brought or appears before the court he should be provided with copies of statements and relevant documents as provided under section 241C and 265C Cr.P.C and be directed to ensure presence of his Counsel on the next date of hearing enabling the court to commence the trial.
- (c) Under section 173 Cr.P.C, it is the duty of the concerned SHO/ Investigating Officer, to produce witnesses and case property before the court during trial. Therefore, the court shall take all necessary measures to bind the SHO/IOs to procure evidence on the fixed date.
- (d) For ensuring production of witnesses, the IOs should provide land line telephone number, cellular phone number, e-mail address to the court/prosecutor for timely service.
- (e) All efforts should be made to produce witnesses and the case property on the first date of hearing.
- (f) If no case is made out or there is no probability of accused being convicted, the accused should be

acquitted of the charge under Section 249-A or 265-K Cr.P.C, as the case may be.

- (g) The court shall not grant unnecessary adjournments and if possible should proceed with the case on day to-day basis.
- (h) The court shall take care that only relevant and admissible evidence is recorded.
- (i) The District and Sessions Judges should hold meetings with the jail authorities to ensure the production of UTPs on the date of hearing to avoid delays on account of non-production of prisoners.
- (j) The court should take strict action against the parties or witnesses causing deliberate delays in proceedings.
- (k) The judgments should be based on well founded reasons and acumen so that it not only resolve the disputes but also lessen the prospects of future litigation.
- (l) Delay in disposal of criminal cases is mostly due to the non-cooperation of relevant stakeholders of justice sector namely, lawyers, police and prison authorities; therefore, the court should ensure that they may fulfill their legal obligations to minimize delays and expedite trials.

11) Cases relating to preventive detention under section 107 read with section 151 Cr.P.C. should be decided as early as possible by following the procedure as envisaged under section 112, 117 and 118 Cr.P.C.

12) Production before court for remand/trial is a statutory right of every prisoner; therefore, the District and Sessions Judges should ask the jail authorities to ensure that the prisoners must be produced before the court. The District and Sessions Judges should also monitor that while granting remand all requisite procedural formalities are complied with.

- (i) The High Courts should ensure that the prisoners are produced before the Courts and violations of such instructions should be taken seriously
- (i.a) During the hearing, the production of prisoners / witnesses and other relevant evidence before the Court is the responsibility of Prosecution/Investigation Agency; therefore, the concerned authorities should discharge their responsibility without any failure or slackness.
- (ii) The Prosecution should procure the attendance of witnesses on the date of hearing and the court must ensure that no witness should return unexamined and the prisoner without any progress in his trial/case.
- (iii) The trial Court shall not grant unnecessary adjournments particularly on account of failure to produce the prosecution witnesses. If any Police Officer or Investigating Officer of the case is found guilty of deliberate attempts to prolong the trial, the trial Court may report the matter to the Officer Incharge of such Police Officer for taking necessary action. If in any case it appears that no action has been taken on the complaint the matter may be brought to the notice of Chief Justice through Registrar for initiating contempt proceeding against such Police Officer responsible for causing hindrance in conclusion of trial. To discourage the tendency of taking adjournment on flimsy grounds, the Registrar of the High Court may convey a meeting of the Inspector General Police, Prosecutor General and Advocate General to chalk out a uniform policy for expeditious disposal of criminal cases.
- (iv) In appropriate cases where complaints have been made against Police for misuse of authority, dishonest investigation, negligence and inefficiency, the matter may be reported to the Police Complaint Authorities and District Public Safety Commission for initiation of disciplinary proceeding against the delinquents.
- (v) In case the trial Court comes to conclusion that the Police have viciously and unnecessary caused delay in forwarding the case to the Court or to any other Authority

to whom he was legally bound to forward any arrested person may be proceeded against the responsible on account of misconduct and in case of conviction he may also be punished with imprisonment for a term which may extend to one year or with fine under Article 157 of the Police Order, 2002.

- (vi) In the Office of the Provincial Police Officer /IGP, a focal person may be designated to perform exclusively the duties of receiving the orders from the Courts in connection with the trial of criminal cases and dispatching it to the concerned quarters for compliance, particularly orders regarding production of record and under trial prisoners in the Court on the date and time fixed by the Court.
- (vii) Sub section (3) of section 167 Cr.P.C. requires that while granting police remand reasons should be recorded for doing so after scrutiny of record and under no circumstances accused should be remanded to police custody unless it is made clear that his presence is actually needed for some specific purpose connected with the completion of investigation. Moreover, sub section (4) of section 167 Cr.P.C. requires the Magistrate to forward a copy of remand order with reasons for making it to the Sessions Judge. Strict compliance of this provision would help the Sessions Judges to supervise the action of Magistrates working under them.
- (viii) Section 344 Cr.P.C. empowers the Court to postpone/adjourn the proceedings and remand the accused person to judicial custody upto 15 days; however, grant of judicial remand in routine on "Robkars" in absence of accused person amounts to violation of law. Therefore, it is recommended that adjournments should not be granted unless necessitated in the interest of justice and for the reasons beyond control.

12-A) Frequent non production of undertrial prisoners for trial on account of law & order situation is also a major cause of delay in disposal of criminal cases. Each High Court should install video conferencing facility at least in one district through its own resources for recording their statements.

13) In criminal cases, non-representation of accused by Counsel is also a source of delay in trial, therefore, the Chief Justices of High Courts, in consultation with the Chairman of the Legal Aid Committee of the Provincial Bar Councils or Pakistan Bar Council, may appoint lawyer in such cases to avoid delay. In this regard a list of the advocates should be maintained in each district so that they can be appointed for provision of legal aid to accused person who cannot afford to hire the services of Counsels. However, prior to appointing any Counsel option of selection from that list should be given to the accused in the interest of justice.

The Federal / Provincial Governments may allocate sufficient fund for Pakistan Bar Council and Provincial Bar Councils for activation of Legal Aid Committees functioning under Legal Practitioners Act 1973 for paying the fee of advocates in deserving cases.

The District Legal Empowerment Committees should be activated for providing legal aid to the deserving litigants, who despite having valid cause could not pursue their cases in courts on account of limited financial resources.

14) To check the tendency of filing false and frivolous cases, the court should take penal action against the party by imposing fines under section 250 Cr.P.C. or filing complaints under section 182 and 211 of the PPC.

- (i) False and frivolous litigation in civil as well as in criminal sides be discouraged by imposing heavy costs, compensation and penalties in accordance with the provisions of section 35-A C.P.C and 250 Cr.P.C so that the precious time of the Courts may not be wasted and utilized for redressal of genuine grievances of the litigants.
- (ii) In cases triable by a Magistrate, if the court discharges or acquits all or any of the accused and is of the opinion that the accusation against them or any of them was false or frivolous, the court may acquit or discharge the accused and may call upon the complainant/informant to show cause as to why he should not pay compensation to the accused. After considering the facts and circumstances of the case the Magistrate may direct the complainant / informant to pay to the accused a compensation not

exceeding rupees twenty five thousand. The compensation payable under section 250 Cr.P.C. is recoverable as arrears of land revenue.

- (iii) If this provision of the law is enforced in its true sense, it would certainly help to reduce the number of groundless and frivolous complaints/ cases. However, in fixing the amount of compensation, the court should carefully consider the status of accused as well as that of the complainant and the nature of accusation. Besides, if it appears to a court that forgery or perjury has been committed in relation to any proceeding before it then the court can proceed against the defaulter under section 476 Cr P.C. to vanish the impression that anyone can abuse the process of law by falsehood or fabrication and that too without any risk of prosecution. Before prosecuting the accused it is essential for the court to consider whether there is a reasonable probability for the conviction and is it expedient in the interest of justice or not?
- (iv) Under section 476 of the Cr.P.C. the court may itself take cognizance of the offence and try it in accordance with the procedure prescribed for summary trials in Chapter XXII of the Code. However, if the court considers that the accused should not be tried summarily under section 476, it may after recording the facts constituting the offence and statement of the accused forward the case to the competent court for trial.

15) Under the **Police Order 2002**, the **Police Complaints Authorities** and **District Public Safety Commissions** are setup at various levels for enquiring into complaints against police regarding misuse of authority, dishonest investigation, negligence and inefficiency. Therefore, it is needed that in appropriate cases the Presiding Officers should make references to concerned authorities for initiation of proceedings against the delinquent police officers/officials.

- (i) At District level, District & Sessions Judges, DCO, DPO and District Attorney/Prosecutor and at Provincial level Registrar, High Court, IGP and Prosecutor General/Advocate General may hold meetings on monthly basis for monitoring the performance of investigation agency, early completion of investigation

and production of witnesses before the court for quick disposal of criminal cases.

- (ii) The Police Officers/Jails Staff responsible for non-production of under trial prisoners before the Courts without any reasonable excuse may be proceeded against under the Police Order, 2002 and other relevant Rules.
- (iii) The trial Court shall not grant unnecessary adjournments particularly on account of failure to produce the prosecution witnesses. If any Police Officer or Investigating Officer of the case is found guilty of deliberate attempts to prolong the trial, the trial Court may report the matter to the Officer Incharge of such Police Officer for taking necessary action. In case it appears that no action has been taken on the complaint the matter may be brought to the notice of Chief Justice through Registrar for initiating contempt proceedings against such Police Officer responsible for causing hindrance in conclusion of trial.
- (iv) The Federal and Provincial Governments should take steps for the establishment of the National Public Safety Commission at national and provincial levels for entertaining the complaints of general public against the Police Officials.

16) Transfer applications under section 526 & 528 Cr.P.C, miscellaneous applications like Supardari of vehicle and disposal of property under chapter XLIII of the Code and other applications arising out of interim orders should be decided within 7 days.

17) In murder references under section 374 Cr.P.C, the practice of printing paper books be discontinued and photocopied books may be accepted so as to avoid unnecessary delay in disposal of appeals for want of printing of paper book

18) To address the issue of convicts including women languishing in jails for want of payment of Diyat, Arsh & Daman even after serving their entire period of sentence of imprisonment, the Federal Government has already framed Rules, called the Diyat, Arsh and Daman Fund Rules 2007. However, despite lapse of considerable time the benefits of this legislation have not trickled

down to the deserving convicts. Therefore, the Provincial Chief Secretaries may be asked to consider the cases of such convicts and make necessary arrangements for payment on first come first-serve basis.

- (i) The Provincial Government may also explore possibilities for creating other funds through Bait-ul-Maal, provincial charitable endowment, if any, and donations. Such funds shall be maintained under proper accounting/auditing mechanism.
- (ii) In order to alleviate the suffering of the prison inmates and to provide the necessary food and other facilities according to scale prescribed under Jail Manual, the Additional District & Sessions Judge on the first Friday of the month the District & Sessions Judge on the last Friday in the afternoon after Court timing may visit to the jail and examine the record of production of prisoners, overall situation of jail and to know the attitude and behaviour of jail officials with the prisoners and submit a brief report to the Registrar of the High Court by the 5th of ensuing month. A consolidated report of such visits may be forwarded by the Registrar of High Court to the Secretary, NJPMC for placing before the Hon'ble Chief Justice of Pakistan/Chairman, NJPMC.
- (iii) The provincial governments should reactivate the practice of appointing philanthropists, social workers, doctors and retired government officers as Non Official Visitors in respect of any Prison as provided in rule 916 of the Prisons Rules 1978.

19. The Courts/Government should make use of the Probation of Offender Ordinance 1960 as well as the Good Conduct Prisoners Probation Release Act 1926 to extend benefits of the said laws by releasing the deserving convicts on parole/probation in accordance with law.

- (i) For effective use of these legislations the Committee recommended that:
 - (a) The Probation and Parole Officers should be activated and be asked to visit jails frequently for conducting inquiry and submission of reports to

facilitate the courts and provincial governments to consider the cases of deserving convicts.

- (b) The Provincial Home Departments should ensure the presence of Probation and Parole Officers in jails during the visits of the Sessions judges and judges of the High Court.
 - (c) The Registrar, Supreme Court/Secretary, NJPMC may convene regular meetings of the Registrars of the High Courts and Home Secretaries to evolve strategies for effective enforcement of the aforesaid laws.
 - (d) In proper cases the Sessions judges should exercise powers under Probation of Offender Ordinance 1960 or make recommendations to concerned government to extend favour to the convicts /UTP under Good Conduct Prisoners Probation Release Act 1926, as the case may be.
- (ii) The jail authority may arrange education facilities for the adult prisoners and those who passes 5th class examination may be given incentive of the remission in their sentence on the basis of improvement in educational qualification.
 - (iii) In the monthly meeting of the Criminal Justice Coordination Committee the services of the specialists may be co-opted for arranging special medical assistance to the prisoners in routine.
 - (iv) Besides up-gradation and increase in salaries of the staff of Prison Departments, the incentive of up-gradation and additional allowance equivalent to one salary to the staff of the R & P may be extended to other provinces in line with the province of Punjab.
 - (v) There is no provision in law to release the women prisoners having suckling babies/children. Nevertheless it was agreed that suitable amendment in the relevant law be suggested by the LJCP for remission of sentences or release on bail of women having suckling babies/children.

- (vi) To enable timely release of foreigners from jails on completion of their convictions, the Home Departments should start the process of repatriation much earlier from the date of their release. In case where delay is on account of nonpayment of fine or fund to defray passage expenses, the assistance of Philanthropist/UN agencies i.e. UNHCR and ICRC may be sought.

19-A) Provincial Governments should improve the living conditions in jails and provide good quality food, clean drinking water and medical facilities.

- (i) Concerned authorities may be asked to carry out the exercise of screening of HIV Aids and Hepatitis cases so that the infected prisoners could be segregated from others and their treatment should be arranged.
- (ii) Jail Manual provides remission in sentence of prisoners in lieu of blood donation and these blood bags are provided to blood banks/NGOs for transfusion. Non screened blood becomes a major cause of transmitting infectious diseases; therefore, henceforth no blood should be provided to blood banks or to any organization without complete screening.
- (ii) Before distributing blood the Medical Officer of the jail should issue a certificate to the official that the donated blood is free from all kind of infectious diseases and the officials found violating the instructions should be taken to task.

19-B) Provision of jail manual regarding grant of remission and other facilities to the jail inmates are being violated; which leads to commission of riots in jails. Provincial Home Secretaries should ensure strict compliance of provisions of Jail Manual without any discrimination and favoritism.

- (i) Moral and spiritual guidance should be provided to the prisoners and efforts should be made for debriefing of prisoners especially involved in terrorist activities, sectarian killings etc. by also involving religious scholars and spiritual leaders.

- (iii) Prison authorities should provide books and other recreational and instructional material for the prisoners.
- (v) Treatment and detoxification facilities for drug addict in the prisons should be provided.
- (iv) Female lady doctors should be posted in the prisons where large numbers of female prisoners are incarcerated.

20) The Registrars of High Courts should approach the Law and Justice Division to know about the pending mercy petitions and copy of the list shall be submitted to the Registrar, Supreme Court, who shall take-up the matter with the competent authority in consultation with the Chief Justice Pakistan on priority basis. In case of rejection of mercy petition, the Provincial Home Secretaries should ensure completion of the process without unnecessary delay to maintain the deterrent effect of the sentence.

21) Emphasis should be given on quick disposal of Narcotics and Anti Terrorism cases, cases of women and Juvenile offenders etc.

For early disposal of ATA cases, the Committee recommended that the judges of the High Courts and Supreme Court be designated to monitor and ensure compliance of guidelines laid down in case of Liaquat Hussain vs. Federation of Pakistan (PLD 1999 SC 504).

22) To clear the backlog under different categories, special benches should be constituted at Principal seat and Branch Registries of Supreme Court and High Court to decide current/old cases by placing the prioritized ones on fast track.

II. CIVIL CASES

- 1) Writ petitions under Article 199 of the Constitution should be fixed for 'Katchi Peshi' on the next day of institution and be disposed of as quickly as possible.
- 2) Writ petitions of the following categories if competent under the law, should be decided within 60 days:
 - (i) Pertaining to service disputes including promotion, transfer and such other matters.
 - (ii) Relating to admission of students in professional colleges and allied matters.
- 3) Stay matter under Order 39 rule 1&2 should be decided within 15 days of grant of interim injunction and in case of delay, the judicial officer should report reasons to the concerned Chief Justice of the High Court through Registrar.

The Committee considered the issue of frequent grant of temporary injunctions by the courts without realizing the consequences and recommended that the following instructions should be complied with strictly:

- (a) All Courts shall examine such applications critically and ensure that the interlocutory injunctions should be granted ex-parte only in very exceptional circumstances, unless the plaintiff can convince the Court that by no reasonable diligence could he have avoided the necessity of applying for unilateral order.
- (b) Such injunctions should be limited to a minimum time within which a defendant can come effectively before the Court.
- (c) It should be noted that under Rule 2-A of Order 39, Code of Civil Procedure, an interim injunction passed in the absence of the defendant shall not ordinarily exceed 15 days, provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff or when the defendant seeks time for defence.

- (d) The Court should take greatest care to state exactly what acts are restrained instead of copying the application, and if only one or some of the acts are sought to be restrained, the injunction should be confined to that and should not hold on other acts to which the defendant can possibly object.
- (e) When the defendant appears or files his reply/affidavit then the court should immediately dispose of the matter without any adjournment and if it is not possible the court should take an undertaking from the defendant to be restrained from doing any act complained about.
- (f) The Court should not allow the abuse of injunction by common tactics such as non-service of process or lingering on the period by seeking adjournments etc.
- (g) An order of Injunction made under Rule 1 or 2 of Order 39 after hearing the parties or after notice to the defendant shall cease to have effect on the expiration of six months unless extended by the Court after hearing the parties again and for reasons to be recorded for such extension and a report of such extension should be submitted to the High Court.

4) The rent cases should be decided speedily within a period of 4 months.

- (i) In rent cases, the details of the property, survey number, locality and complete address of the respondents with a certificate/affidavit to the correctness of that information shall be attached with the eviction application.
- (ii) It is noticed that the provisions of rent laws are not properly understood, appreciated and applied in proceedings by the Rent Controllers, therefore, the Committee asked for strict compliance of guidelines given by the Supreme Court of Pakistan in case reported in SCMR 2000 at page 556, which are as under:-
 - (a) Affidavits of not more than two witnesses in support of the ejectment application shall be filed in the Court in addition to the affidavit of the petitioner himself in support of the contents of ejectment petition.
 - (b) While replying to the ejectment application the respondent shall be similarly required to submit his own affidavit and affidavits of two other witnesses in support

of his affidavit on the date fixed in the notice served upon him.

- (c) The parties shall be bound to produce their witnesses for purpose of their respective cross-examination on the day fixed by the Court.
- (d) A party obtaining the affidavits of the witnesses in support of his petition/reply would be bound to produce them in the Court for cross-examination and in case of its failure to do so their evidence shall be excluded from consideration.
- (e) Appeals against the interim orders of the Rent Controller and resort to Constitutional jurisdiction, against orders at intermediate stages arising out of the ejectment proceedings, should be discouraged.
- (f) The Court should take serious view of the situation when witnesses for cross-examination in support of their affidavits deliberately avoid / evade appearance in Court.
- (g) Adjournment of ejectment petition should not be allowed except under unavoidable circumstances on an application moved by a party supported by affidavit. In such cases also adjournment should not be made for a period exceeding three days. Following the above procedure in ejectment matters appears to be necessary to achieve the goal of expeditious disposal of a case within a period of three months particularly in respect of residential tenements.

5) Appeals, Writ Petitions and other miscellaneous petitions pertaining to rent matters should be decided in 60 days.

6) Revision petitions under CPC arising out of interlocutory orders i.e. interim stay orders, mis-joinder and non-joinder of necessary parties, appointment of local commissioners and non-payment of court fee should be decided within 3 months subject to the maintainability of such petition.

- (i) The Presiding Officer of the Court may refer cases for recording of evidence through Commission subject to the consent of parties by appointing the Advocate as a Commission. However, the Commission should only be

appointed in simple cases i.e. rent, family etc and not in cases involving delicate question of law.

- (i.a) The fee of the Commission shall be fixed with the consent of parties and their Counsels. The evidence shall be recorded in the light of Order XXVI of the C.P.C. However, the period for completion of recording of evidence shall not be more than one week and the objections if any shall be decided by recording proper order.
- (ii) The Commission shall complete the evidence within week and submit its report to the Court. It is desirable that the Commission is appointed out of a panel of advocates having not less than three years experience and good record of pleading of cases.
- (iii) The appointment of Commission should be streamlined and in each district a list of lawyers should be maintained for appointment as a Commission in consultation with the representatives of Bar and such list of lawyers should be updated regularly. The Commission should be appointed out of agreed list/panel in rotation, ensuring that there is no favoritism/nepotism and no repetition of names as favour to some.
- (iv) The appointment for Commission should be made on merit by considering the qualification and standing at Bar.
- (v) The Commission should be appointed with free consent of the parties.
- (vi) The Commission should record evidence in the court room in physical presence/control of the judicial official.
- (vii) On closure of proceedings, the Presiding Officer should give a certificate to the effect that the evidence was recorded by the Commission in his physical presence.
- (viii) If the workload is manageable then the recording of evidence through Commission should be avoided and the judicial officer should record evidence under his hand.

6-A) In cases where appeals/revisions have been filed against any order, the trial court should not stop the proceedings unless it is specifically barred to proceed with the case.

7) Family cases should be decided within 3-6 months.

8) Civil appeals arising out of family cases, custody of minors, guardianship cases, succession and insolvency cases, if competent, shall be decided within one to four months and for any delay, reasons should be furnished to the High Court.

9) Cases related to public revenues should be decided within a period of six months positively in order to meet the constitutional requirements.

9-A) Revenue authorities should proceed to recover public revenues where no stay order is granted by any court or has expired by efflux of time.

10) Civil Judges should decide review applications within 30 days and the trial of new cases (instituted after 1st January 2009) should be completed within 6 months.

11) Negotiable Instrument cases which are decided through summary procedure as provided under Order XXXVII of the Code of Civil Procedure 1908 should be decided in 90 days.

12) Priority should be given to women and juvenile cases for quick disposal.

12-A) Cases related to fiscal matters should be taken on fast track for disposal to meet the Constitutional requirements.

13) The Small Claims and Minor Offences Courts Ordinance 2002 should be applied in earnest. The High Courts should designate civil judges cum Magistrates to try exclusively cases under said law. Such judicial officers be imparted training in ADR. For this purpose a Committee of judges of the High Courts headed by a judge of the Supreme Court would arrange training in ADR for master trainers who would later on train the remaining judges in provinces.

The Small Claims and Minor Offences Courts Ordinance 2002 has been promulgated for providing exclusive forum for facilitating the resolution of small disputes. This law also provides for ADR

mechanism for facilitating the resolution and settlement of disputes outside the court system. This could be transformed into an excellent forum for addressing backlog of cases, therefore, the High Courts should approach respective provincial governments for establishment of more such courts to deal with the cases under the provisions of Small Claims and Minor Offence Courts Ordinance 2002 exclusively.

The NGO's and professionals having expertise in ADR may be encouraged to establish ADR Centers at their own in other provinces on the pattern of ADR, Centre Karachi. Technical disputes should be arbitrated by at least one expert in the panel.

Government may establish a Centre for ADR in Islamabad on the pattern of Karachi Centre for Dispute Resolution in collaboration with Federal Judicial Academy and other relevant organizations and experts.

High Courts should organize workshops on ADR in the provincial capitals wherein the members of the ADR Committee, constituted under the NJPMC, be invited to impart training to the participants.

13-A) There are enabling provisions in different laws for amicable settlement of disputes. Therefore, the Presiding Officers should strive at every material stage of the proceeding to induce in a very non-intrusive and benign manner to the parties to settle their dispute through ADR without wasting time and money on protracted and contested litigation.

(13-B) As a matter of policy, courts should ask the parties to consider mediation at preliminary stage. Each High Court may setup a committee to explore administrative changes that can be made in applicable rules to facilitate or encourage mediation at this stage.

(13-C) The judiciary should actively promote and facilitate the functioning of quasi-judicial bodies in order to establish well functioning regulatory institutions.

(13-D) The courts should maintain the data in respect of cases disposed of through Alternate Dispute Resolution(ADR)

(13-E) Each High Court should frame Rules to make the mediation compulsory.

(13-F) A.D.R. should be made a part of legal education and the judges having national responsibility should be satisfied about the importance of investment treaty/ arbitration.

14) In the Supreme Court and High Courts, priority should be given to dispose off old cases, except cases in which special orders were passed by court for fixation of the cases on specified dates.

15) To clear the backlog under different categories, special benches should be constituted for each category on the Principal seat and Branch Registries of the Supreme Court and High Court. There should be a commitment of judges to decide the old civil/criminal cases as early as possible.

16) Priority should be given to the disposal of trade, commercial and investment cases. Such cases should be managed on fast track through establishment of designated courts and by constituting special benches by High Courts and Supreme Court.

16-A) In dealing with complex commercial issues the judiciary should rely on and utilize expert knowledge so that a more informed verdict may be reached.

17) Late issuance of cause lists by the High Courts creates problems for lawyer/litigant and parties to appear in court on short notice, which results in adjournments. Therefore, to provide reasonable time to the parties to adjust their schedule, the Supreme Court and High Courts should issue their cause lists one month in advance.

18) For early disposal of cases, the courts should adopt the following measures:

- (a) To cope with the problem of increasing litigation, it is necessary that the courts shall carefully scrutinize the pleadings, record and dismiss/reject false, fictitious and frivolous cases as provided under Code of Civil Procedure 1908.

- (b) The provision of Order 11 of the C.P.C. regarding discovery and inspection should be applied properly to narrow down the controversies as well as issues leading to recording of statement of fewer and relevant witnesses.
- (b-i) To narrow down the controversies in civil cases, the Presiding Officer should ascertain from each party whether he admits or denies such allegation of facts as are made in the plaint or in written statement, if any. The issues be narrowed down to the essential ones. This practice will help the court to restrict its proceeding to the actual controversies.
- (b.i.a) The Court should use the procedure provided in Order 10 rule 4 CPC more effectively or in meaningful way to shorten the litigation before framing issues.
- (b-ii) Recording of better statement before proceeding with the case could facilitate the court to have overview of actual controversies. Therefore, Presiding Officer may ask the parties to submit better statements.
- (b-iii) In suits against the Government, the concerned departments do not file written statement/reply within the prescribed time which causes unnecessary delay in initiation of trial. Therefore, the courts should ensure submission of reply within the shortest possible time failing which person responsible for delay must be taken to task.
- (c) The parties denying documents that may be proved later should be burdened with costs incurred for proving that document as well as incidental costs.
- (d) The courts should make use of section 89A C.P.C. to resolve disputes through Alternate Dispute Resolution (ADR) including conciliation, mediation and arbitration or any such other appropriate mode.
- (e) The plaintiff should be obligated to provide the defendant's mailing address and telephone/ fax number.
- (f) The present strength of process serving agencies is inadequate and should be appropriately increased and

alternate methods of service including courier service be used as ordinary mode of effecting service.

- (g) The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs.
- (h) Execution proceedings should be completed quickly for satisfying the decree.
- (i) The court should discourage frequent interlocutory applications for concentration on disposal of cases as a whole.
- (j) All the oldest and contested cases having intricate questions of law pending in different Courts in the districts should be transferred on the roster of D&SJs for disposal on day to day basis.
- (k) While marking cases to different courts, the administrative judges should consider the experience/ length of service of the Judge to whom the case is marked and it should be ensured that the contested cases involving intricate questions of law should be marked to the experienced Judicial Officers.
- (l) The Courts should make use of information technology for fixture/assigning dates of hearing.
- (m) Each case should be fixed after a reasonable time in rotation.
- (n) The role of Para Legal Staff/Readers in fixing date of hearings should be discarded. The Presiding Officer should issue a "Peishi Parchi"/Adjournment Slip under his signature to parties/counsels.
- (o) For fixing a date of hearing/adjournment the nature of case may be taken into consideration.

19) To check filing of false and frivolous cases the courts should impose compensatory costs under section 35-A of the C.P.C. Similarly on the patron of High Court of Sindh, the other High Courts may also amend the relevant rules for incorporation of

a provision to impose a cost upto rupees one lac for false, frivolous and vexatious litigation.

19-A) In environmental and Public Interest Litigation cases the delinquent officers be penalized or burdened with costs in addition to the main relief. Costs to be partially awarded to the person who brings the matter to the court on behalf of public. Costs can also be in the shape of a direction to the delinquents to render community services. Frivolous Public Interest Litigation or Personal Interest Litigation cases be burdened with heavy costs.

19-B) To check filing of revenue cases in fake names, the NADRA should be taken on board to verify the credentials of parties.

20) Civil and criminal functions of the court should be bifurcated so that the judicial officers can try criminal and civil cases exclusively. For fuller comprehension of civil/criminal law and experience, such judicial officers be rotated annually.

21) The cases should be tried strictly in accordance with the law /rules by giving sufficient opportunities to the litigant parties/members of the Bar to plead their cases and justice must not be sacrificed on technicalities.

22) Judges of district judiciary may fix last Saturday of each month as a judgment day subject to the condition that no urgent matter is pending and the workload so permits.

LONG TERM MEASURES

- 1) The judges of High Courts should carryout inspections of prisons periodically for ensuring compliance of Prison Rules and giving on the spot remedy/relief to the deserving prisoners in accordance with law.
- 2) The High Courts should frame an equitable, consistent and coherent policy for sending the Judges to the permanent and circuit benches so that every judge gets equal opportunity to serve at the principal seat and benches. A Judge may not be transferred just for hearing a particular case and thereafter transferring him to other station, as this practice is against the principle of independence of judiciary.
3. Necessary funds be provided by Government for infrastructure support like construction of courtrooms, amenities for lawyers/litigants parties. The strength of judicial officers and administrative staff should be increased to cope with rising trend of litigation in the country. Adequate staff, library facilities and accessory equipment like computers should also be made available to courts.

The Committee recommended the following:

- (a) The vacant posts in the subordinate courts should be immediately filled and funds for creation of new additional posts of Civil Judges cum Judicial Magistrates may be acquired from respective governments to allay the concerns of an ordinary litigant and to meet the challenges of growing population and economy
- (b) Presently, judicial officers are appointed through respective Provincial Public Service Commissions which takes time. Keeping in view the emergent need of judges to clear backlog, the High Courts should consider making appointments on adhoc basis.
- (c) The High Courts should utilize the Provincial Judicial Development Fund (PJDF) to make available the essential paraphernalia such as provision of furniture, law books, typewriters and creating an integrating computer network for access to information and material and effective supervision/monitoring of the performance of the subordinate courts.

- (d) The High Courts shall seek necessary funds from Provincial Governments for infrastructure support like construction of courtrooms, amenities for lawyers/litigants parties, residential accommodation of judicial officers/court staff and for increasing the strength of judicial officers and administrative staff to cope with the rising trend of litigation in country. Adequate staff, library facilities and necessary equipment like computers should also be made available to the Courts.
- (e) Upgrading and activation of judicial academies to arrange pre and in-service training of the judicial officers and staff.
 - (e.i) Arrangements should be made for training and capacity-building of judges, court staff and counsel on issues of gender bias and judicial empathy through judicial academies and similar institutions
 - (e.ii) Periodic refresher courses should also be offered to enhance the capacity of judges and support staff
 - (e.iii) Training period should be increased and there should be national standards for judicial education and judicial academies.
 - (e.iv) The Bar Councils and Bar Associations should arrange refresher courses for the young lawyers and also play their effective role for improving the quality of legal education.
- (f) Seminars and workshop should be organized for judges to have regular interaction and experience sharing with other judges at provincial and national level.
- (g) For provisions of Air conditions, Generators, UPS and other necessary equipments to the courts for uninterrupted functioning, the Chief Justices of the Provincial High Courts may work out their needs and approach the provincial governments for necessary funds.
- (h) Registrars of High Courts may approach the Provincial Governments for establishment of forensic laboratory at least at divisional level.

4) Scattered courts are also one of the major causes of nonappearance of lawyers as it takes hours to reach from one court to another. Therefore, in the cities court complexes should be constructed to accommodate all courts in one premises. Special Federal & Provincial Tribunals should also be accommodated in such judicial complex.

5) Presently, some judges of the High Courts are performing additional functions like Chairman, Environmental Protection Tribunals, Labour Appellate Tribunals etc which affects the working of the High Courts as a whole, therefore, it is decided that the concerned Government may be asked to appoint suitable persons against these positions instead of giving additional charge to the High Court Judges.

5-A) Green Benches / specialised environmental tribunals should be strengthened and judicial decisions on environmental cases be made available publically and promptly implemented. Training on environmental law / procedure be provided to judges and lawyers. Further more law schools should be encouraged to include environmental law in their curriculum.

6) The Government of Sindh in exercise of powers conferred under section 59 of the Prisons Act 1894 has brought an amendment in the Prisons Rules where-under the condemned prisoners are not kept in death cells till final decision on their appeals. Keeping in view the agonies of the condemned prisoners detained in death cells, the Committee directed that the Provincial Governments of Punjab, Balochistan and NWFP should consider making similar arrangements for taking out the condemned prisoners from death cells and keeping them in barracks with adequate security arrangements.

7) The Provincial Governments should realize the difficulties of under resource and over congested jails and establish new jails at district level or enhance the capacity of existing jails by constructing new barracks duly equipped with necessary amenities.

8) Non-production of prisoners before the Courts for trial due to shortage of resources and cramped judicial lockups is a major cause of delay in quick disposal of cases, therefore, the Provincial Governments should equip the prison department with necessary resources and increase the capacity of judicial lockups by

constructing additional rooms with necessary facilities and security so that prisoners who are brought from other Districts should be kept there to face their trial.

- (i) The provincial governments should be asked to construct jails at least at a district level and a sub-jail at tehsil level.
- (ii) The Committee further resolved that specious judicial lockups (Bhakhshi Khanas) with necessary facilities should be constructed in the Court premises for under trial prisoners rather than keeping them in prisons van in scorching temperature. For the time being, in case of non availability of judicial lockups the under trial prisoners may be kept in the lockups of police station near the District Courts for their production during trial.
- (iii) The jail authorities may adopt the system of double lock for the children wards and the keys may be kept with two jail officials.

9) To address the problem of medical facilities to the inmates of various jails, the Committee recommended that the Chief Justices of the High Courts should hold meetings with the Chief Secretaries and Finance/ Health Secretaries of the provinces to chalk out policy for providing adequate medical treatment facilities to the ailing prisoners.

10) The capacity and functioning of process serving agencies be improved and for this purpose, the provincial governments may be approached for funds.

The service of summons through Internet, TCS, Telephones and any other efficient method should be adopted by substituting the present outdated system of service through bailiff / Peyada. The Registrars, of the provincial High Courts with the approval of Chief Justices may settle subsidize rates with the local courier service. Such courier agencies should furnish reports to the concerned Courts regarding timely service of summons and in case of non service without any cogent reasons the firm should be held responsible.

11) Computerization and networking should be introduced at all levels of judicial hierarchy. By introducing specifically designed software, the effectiveness of computers could be enhanced to

check and monitor the case flow and measuring the qualitative and quantitative output of judicial officers. Therefore, all the computers of a province should be connected through web based networking so that data transferring to MIT branch, High Court becomes easy.

12) Installation of Video Conferencing facility between the courts and jails will also help the courts in early disposal of cases. Therefore, High Courts should take initiatives for introducing modern techniques and automation in the courts.

12-A) A modern Witness Protection Program should be implemented to ensure safety and protection of witnesses, prosecutors and the presiding officers and such modalities should be adopted through which a witness can be examined through video link and in this regard legislation be considered subject to constitutional provisions.

13) In the province of Punjab, the judicial officers of the subordinate Judiciary are drawing additional judicial allowances equal to three times of their salaries, therefore, it is desirable that the judicial officers of all the provinces be treated alike and disparity in their salaries and allowances be removed.

14) The salary/allowances of court staff should also be suitably increased.

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